



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2018-0831; FRL-9989-53-Region 9]

Finding of Failure to Attain and Reclassification of Pechanga Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation nonattainment area (“Pechanga nonattainment area” or “Pechanga area”) failed to attain the 2008 national ambient air quality standards for ozone (“ozone NAAQS” or “ozone standards”) by the applicable attainment date. The effect of failing to attain by the attainment date is that the “Moderate” Pechanga nonattainment area will be reclassified by operation of law to “Serious” upon the effective date of the final reclassification action. This proposed action, if finalized, would fulfill the EPA’s statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the attainment date.

DATES: Written comments must arrive on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2018-0831 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972-3407, lawrence.laura@epa.gov.

SUPPLEMENTAL INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Regulatory Context

A. Ozone Standards

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to elevated levels of ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.¹

Under section 109 of the Clean Air Act (CAA or “Act”), the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.² In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.³ Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this proposed action relates to the 2008 ozone NAAQS.⁴

¹ See “Fact Sheet – 2008 Final Revisions to the National Ambient Air Quality Standards for Ozone” dated March 2008.

² The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. See 62 FR 38856 (July 18, 1997).

³ 73 FR 16436 (March 27, 2008). The 2008 ozone NAAQS are codified at 40 CFR 50.15.

⁴ Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

B. Area Designations and Classifications

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS, and the EPA designated all areas in the country for the 2008 ozone NAAQS in 2012.⁵ With respect to the 2008 ozone NAAQS, the EPA classifies nonattainment areas under CAA section 181 and 40 CFR 51.1102 according to the severity of the ozone pollution problem, with classifications ranging from Marginal to Extreme. Attainment deadlines are determined by the nonattainment area's classification in accordance with CAA section 181(a)(1) and 40 CFR 51.1102. Nonattainment area classification also determines, in part, the emissions control requirements for ozone applicable to the area.

C. Determinations of Attainment or Failure to Attain

Section 181(b)(2) of the CAA requires the EPA to determine whether areas designated nonattainment for ozone attained the standards by the applicable attainment date.⁶ Under EPA regulations at 40 CFR part 50, Appendix P, the 2008 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. This 3-year average is referred to as the "design value." When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS.

⁵ 77 FR 30088 (May 21, 2012). The initial area designations for the 2008 ozone NAAQS were effective July 20, 2012.

⁶ In a recent rulemaking, the EPA proposed to make these determinations for most other areas in the country. See 83 FR 56781 (November 14, 2018).

Because the design value is based on the three most recent calendar years of complete, quality-assured data, an area must attain the standard by the end of the full calendar year prior to the attainment date.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.⁷ Ambient air quality monitoring data for the 3-year period preceding the attainment date must meet the data completeness requirements in Appendix P.⁸ The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

To make the determination that an area attains the NAAQS, each monitor must have a valid design value meeting the standard.⁹ If one or more monitors have a design value that exceeds the standard, the area does not attain the NAAQS.

D. Reclassification

In the event an area fails to attain the ozone NAAQS by the applicable attainment date, CAA section 181(b)(2)(A) requires the EPA to make the determination that the ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and

⁷ The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data are used to (1) assess air quality, (2) assist in attainment/nonattainment designations, (3) evaluate SIPs for nonattainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the Web site at <https://www.epa.gov/aqs>.

⁸ 40 CFR part 50, Appendix P, section 2.3(b).

⁹ Design values attaining the 2008 ozone NAAQS must also meet minimum data completeness requirements specified in 40 CFR part 50, Appendix P to be considered valid.

requires the area to be reclassified by operation of law to the higher of either the next higher classification for the area, or the classification applicable to the area's design value as of the determination of failure to attain.

II. Proposed Determination and Rationale

A. Pechanga Ozone Nonattainment Area and Attainment Deadline

The Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation ("Pechanga Tribe") is a federally recognized tribe whose reservation ("Pechanga Reservation") straddles the boundary between western Riverside and northern San Diego counties. The EPA designated the lands of the Pechanga Reservation as nonattainment for the 2008 ozone standards on May 21, 2012. At the time of designation, the nonattainment area consisted of the entirety of the Pechanga Reservation.¹⁰

At the time of designation, the Pechanga area was classified as a Moderate nonattainment area.¹¹ Moderate areas were given a deadline of July 20, 2018, to attain the 2008 ozone NAAQS. As noted above, because the design value is based on the three most recent calendar years of complete, quality-assured data, an area must attain the standard by the end of the full calendar year prior to the attainment date. In this case, to determine whether an area classified as Moderate for the 2008 ozone standards attained the standards by the July 20, 2018 attainment date, we rely on complete, quality-assured and certified ozone monitoring data from calendar years 2015, 2016, and 2017.

¹⁰ The Pechanga Tribe has since acquired additional lands that they have placed in trust; however, the nonattainment area boundaries established in 2012 for these standards are unchanged and do not include these new properties.

¹¹ 77 FR 30088, at 30109 (May 21, 2012).

B. Determination of Failure to Attain

We are proposing to determine that the Pechanga nonattainment area failed to attain the 2008 ozone standards by the July 20, 2018 attainment date. We are proposing this determination on the basis of complete, quality-assured and certified data for 2015-2017 at the Temecula monitoring site (AQS ID 06-065-0016), which is located approximately 10 miles north of the Pechanga Reservation.¹² The Temecula monitoring site is operated by the South Coast Air Quality Management District (SCAQMD). The Pechanga Tribe also operates an ozone monitoring site at the reservation and submits the data that it collects to AQS. However, the 2015-2017 design value from the Pechanga monitoring site is invalid because it does not meet the completeness requirements for the 2008 ozone standard.¹³ Therefore, our proposed determination that the Pechanga nonattainment area failed to attain is based on data from the Temecula monitoring site rather than data collected at the Pechanga monitoring site.

The EPA's "Policy for Establishing Separate Air Quality Designations for Areas in Indian Country" ("Tribal Designation Policy") anticipates the use of data from proximate state regulatory monitors to characterize air quality on tribal lands when air monitoring data are

¹² In accordance with 40 CFR 58, data-collecting agencies must certify annually that ambient concentration data and quality assurance data are completely submitted to AQS, and that the data are accurate to the best knowledge of the certifier, taking into consideration quality assurance findings. For certification for Temecula monitor data for calendar years 2015-2017, see 1) April 29, 2016 letter from Laki Tisopulos, South Coast Air Quality Management District Assistant Deputy Executive Officer to Deborah Jordan, EPA Region IX Air Division Director; 2) April 28, 2017 letter from Jason C. Low, South Coast Air Quality Management District Assistant Deputy Executive Officer, to Alexis Strauss, EPA Region IX Acting Regional Administrator; and 3) April 27, 2018 letter from Jason C. Low, South Coast Air Quality Management District Assistant Deputy Executive Officer, to Alexis Strauss, EPA Region IX Acting Regional Administrator.

¹³ AQS 2017 Design Value Report for Pechanga (AQS ID 06-065-0009), December 17, 2018. The 2015-2017 DV for the Pechanga monitoring site failed to meet the 75% annual completeness requirement in 2015 (67%) and the 90% 3-year completeness requirement for 2015-2017 (85%) and, therefore, is invalid. 40 CFR part 50, Appendix P, section 2.3(b).

unavailable on the reservation.¹⁴ In a previous rulemaking, the EPA relied on 8-hour ozone data from the Temecula monitor to redesignate the Pechanga nonattainment area to attainment for the 1997 ozone NAAQS based on our conclusion that the data from the Temecula monitor were representative of ozone concentrations in the Pechanga nonattainment area.¹⁵ This conclusion was based on the following considerations: ozone pollution is regional in nature; the Temecula monitor is located just 10 miles from the Pechanga area; there are no significant topographic barriers between the monitor and the reservation; and available data from the Temecula and Pechanga monitors tracked very closely over the 2012 to 2014 period.¹⁶

The ozone data collected at SCAQMD's Temecula monitoring site is complete and, as discussed above, representative of ozone concentrations at the reservation. The 2017 design value calculated from 2015-2017 data from the Temecula monitor is 0.080 ppm, which exceeds the 2008 ozone standard level of 0.075 ppm.¹⁷

C. Reclassification to Serious

If we finalize the finding of failure to attain as proposed, the effect of this finding would be to reclassify the Pechanga nonattainment area by operation of law to Serious, the next higher classification, as provided under CAA section 181(b)(2)(A)(i). If reclassified, the Pechanga area would be required to attain the standard "as expeditiously as practicable" but no later than 9 years after the initial designation as nonattainment, which in this case would be no later than July 20, 2021. After reclassification to Serious, if the area attains the 2008 ozone NAAQS prior to the

¹⁴ "Policy for Establishing Separate Air Quality Designations for Areas of Indian Country," a memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X, dated December 20, 2011. A copy of the Tribal Designation Policy is at <https://www.epa.gov/ozonedesignations/guidance.htm>. See page 6 of the Tribal Designation Policy.

¹⁵ 80 FR 18120 (April 3, 2015).

¹⁶ 80 FR 18120, at 18121-18122 (April 3, 2015) (Response to SCAQMD Comment #1).

¹⁷ AQS 2017 Design Value Report for Temecula (AQS ID 06-065-0016), report date December 12, 2018.

Serious-area attainment date, the area may seek a clean data determination or a redesignation to attainment.

As noted above, control and permitting requirements for nonattainment areas are determined, in part, by their classification, and a reclassification from Moderate to Serious imposes additional control requirements. Under the CAA and the Tribal Authority Rule (TAR),¹⁸ tribes may, but are not required to, submit implementation plans to the EPA for approval. Under the TAR, the EPA has authority to implement such plan provisions as are necessary or appropriate to protect air quality where tribes do not do so. Accordingly, the EPA implements the tribal major source nonattainment new source review (NSR)¹⁹ and the title V operating permit²⁰ programs in areas without delegated programs. If this proposed reclassification is finalized, the Pechanga nonattainment area will be subject to the Serious area provisions of the tribal major source nonattainment NSR regulations and title V regulations cited above, but it will not be required to submit an implementation plan to address any part D or title V requirements. The Pechanga area is currently subject to Moderate area major source thresholds of 100 tons per year (tpy) for ozone precursors. If this proposal is finalized, the Pechanga area major source thresholds will be lowered to 50 tpy for ozone precursors. The NSR control requirements for minor sources under the tribal minor NSR regulations will remain the same.²¹

III. Proposed Action and Request for Public Comment

The EPA is proposing to determine that the Pechanga nonattainment area failed to attain the 2008 ozone NAAQS by its applicable Moderate area attainment date of July 20, 2018, based

¹⁸ CAA section 301(d) and 40 CFR part 49.

¹⁹ 40 CFR 49.166 through 49.173.

²⁰ 40 CFR part 71.

²¹ 40 CFR 49.151 through 49.164.

on complete, quality-assured and certified data from the Temecula monitoring site for years 2015-2017. The effect of this determination, if finalized, will be to reclassify the Pechanga nonattainment area from Moderate to Serious for the 2008 ozone NAAQS. The EPA is soliciting comments on our proposed action and rationale over the next 30 days.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This proposed rule does not impose an information collection burden under the provisions of the PRA. As noted above, under the CAA and TAR, tribes may, but are not required to, submit implementation plans to the EPA for approval to address the more stringent requirements that apply to Serious ozone nonattainment areas relative to Moderate ozone nonattainment areas.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities. The proposed determination of failure to attain the 2008 ozone NAAQS (and resulting reclassification) does not in and of itself create any new requirements beyond what is

mandated by the CAA. Instead, this proposed rulemaking only makes factual determinations, and does not directly regulate any entities.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA staff have discussed this proposed rule with environmental staff of the Pechanga Tribe. Additionally, an opportunity for formal government-to-government consultation is being extended to Pechanga tribal officials in conjunction with this rulemaking. This outreach and consultation is being conducted according to the “EPA Policy on Consultation and Coordination with Indian Tribes.”²²

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

²² The document “EPA Policy on Consultation and Coordination with Indian Tribes” is available at <https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations

The EPA believes that this proposed action will not have disproportionately high or adverse human health or environmental effects on minority, low income, or indigenous populations. The purpose of this rule is to make the determination whether a certain area attained the 2008 ozone NAAQS by the attainment date, which is required by the CAA for purposes of implementing the 2008 ozone NAAQS. As such, this action does not directly affect the level of protection provided for human health or the environment.

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 1, 2019.

Deborah Jordan
Acting Regional Administrator,
Region IX.

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